IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/02/2004

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.19561 of 1999

Shanthi .. Petitioner

-Vs-

1. The State of Tamil Nadu
rep. by its Secretary to Government
Housing & Urban Development Department
Fort St. George, Chennai-9.

2. The Special Tahsildar (L.A.)
Housing Scheme Unit-I
Coimbatore-18.

3. The Chairman
Tamil Nadu Housing Board
Chennai-600 035. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying to issue a writ of Certiorari as stated within.

For Petitioner : Mr.N.Ishtiaq Ahmed

For Respondents: Mr.M.S.Palanisamy
Addl. Government Pleader
for respondents 1 and 2
Mr.D.Veerasekaran
for 3rd respondent

:ORDER

The petitioner seeks a writ of certiorari to call for the entire records pertaining to the notification under Section 4(1) of the Land Acquisition Act (for brevity "the Act") made in G.O.Ms.No.495, Housing and Urban Development L.A.3(2), dated 14.11.1996, published in the Tamil Nadu Government Gazette on 18.12.196, and the declaration madein G.O.Ms.No.442, Housing and Urban Development Department L.A.3(2), dated 23.12.1997 on the file of the first respondent and to quash the same as illegal, arbitrary and without jurisdiction insofar as the petitioner's land is concerned.

2. It is not in dispute that the petitioner is the owner of the land of an extent of one acre comprised in Survey No.5/2B in Vellakinar Village, which is sought to be acquired pursuant to the notification issued under Section 4(1) of the Act dated 14.11.1996, which was published in the Tamil Nadu Government Gazette on 18.12.1996, in the local daily, on 3.1.1997 and in the locality on 6.1.1997. However, it appears that the petitioner had submitted his objections only on 21.3 .1 997, which is beyond the period of 30 days from the last date of publication of the notification under Section 4(1) of the Act, which was published in the locality on 6.1.1997, as mentioned above.

3. It is true an enquiry under Section 5A of the Act was held on 6.3

.1997 and 31.3.1997, wherein the petitioner was furnished with the remarks of the Acquisition authority and thereafter, a declaration under Section 6 of the Act was passed on 23.12.1997, published in the Tamil Nadu Government Gazette on 24.12.1997, in the local dailies on 29.12.1997, and in the locality on 2.1.1998. Thereafter, an award enquiry was conducted and an award was passed on 15.12.1999.

4. But, since the petitioner has approached this Court seeking a stay of the said acquisition proceedings, this Court passed an order on 9.12.1999 in W.M.P. No.28696 of 1999 restraining the respondents from interfering with the possession of the petitioner in the impugned lands.

5. Mr.N.Ishtiaq Ahmed, learned counsel for the petitioner seriously contends that even though there was a delay in submitting the objection to the notification issued under Section 4(1) of the Act by the petitioner, the fact remains that the petitioner submitted the objection before the enquiry under Section 5A of the Act was conducted, and during the enquiry the petitioner was furnished with the remarks of the Acquisition authority, which violates the procedure contemplated under Rule 3(b) of the Tamil Nadu Land Acquisition Rules (for brevity "the Rules").

6. Per contra, Mr.M.S.Palanisamy, learned Additional Government Pleader appearing for the respondents invited my attention to the decisions of the Division Bench of this Court in (i) CHIEF EXECUTIVE OFFICER, CMDA, EGMORE, Vs. SAKUNTHALA & OTHERS reported in 2000 WLR 7 79; and (ii) THE EXECUTIVE ENGINEER & ADMN. OFFICER, ETC. Vs. S. GOVINDARAJ & OTHERS reported in 2004 (1) LW 43, and contended that the petitioner having failed to submit her objection to the notification under Section 4(1) of the Act within the period of thirty days provided thereunder has no locus standi to challenge the acquisition proceedings, nor to complain any violation of Rule 3(b) of the Rules.

7. I have given careful consideration to the submissions of both sides.

8. Under the facts and circumstances of the case, the following

issues arise for my consideration:

(i) whether the petitioner has locus standi to challenge the impugned acquisition proceedings on the ground of violation of Rule 3 (b) of the Rules, as she failed to submit her objections to the notice issued under Section 4(1) of the Act within thirty days provided thereunder for filing her objections? and
(ii) whether the consideration of the belated objections of the petitioner by the land acquisition authority would amount to waiver of default on the part of the petitioner?

9. It is true there is a violation to Rule 3(b) of the Rules, as the respondents have not conducted any further enquiry on the basis of the objection submitted by the petitioner to the remarks furnished by the acquisition authority. But, it is settled law that if the objections are not filed by the land owners within the stipulated time of thirty days from the date of receipt of the notification under Section 4(1) of the Act, taking the last date of publication of the notice as the relevant date of the notice under Section 4(1) of the Act, the acquisition authority is not obliged to hold an enquiry on such objection and therefore, the failure on the part of the land owner to prefer objection within thirty days from the date of receipt of the notice disables him to challenge the acquisition proceedings even though at a later stage, the land acquisition authorities waived the default on the part of the land owner in submitting the objections belatedly, vide (i) CHIEF EXECUTIVE OFFICER, CMDA, EGMORE, Vs. SAKUNTHALA & OTHERS reported in 2000 WLR 779; and (ii) THE EXECUTIVE ENGINEER & ADMN. OFFICER, ETC. Vs. S.GOVINDARAJ & OTHERS reported in 2004 (1) LW 4 3.

Resultantly, answering both the issues raised above in negative, this writ petition is dismissed. No costs.

Index : Yes
Internet : Yes

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